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No. 06-05

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IN THE

Supreme Court of the United States

DOREL INDUSTRIES, INC.,

Petitioner,

v.

SUPERIOR COURT OF SANTA CLARA COUNTY, CALIFORNIA,

Respondent.

(Jonathan Jackson III, by and through his Guardian ad Litem, Jocelyn Sullivan, and Jocelyn Sullivan, Real Parties in Interest)

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, SIXTH DISTRICT

BRIEF IN OPPOSITION

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BRIEF FOR REAL PARTIES IN INTEREST IN OPPOSITION

Petitioner Dorel Industries, Inc.—whose business includes the design, manufacture, and sale of child restraints—was sued because on December 11, 2003, Jonathan Jackson III was severely injured in an automobile accident while riding in one of Petitioner's defective child booster seats. The defendants included Dorel Juvenile Group, Inc. (DJG), and Petitioner, the parent of DJG through an intermediary corporation. Pet. App. A 1a.

The Petition for Certiorari challenges a California court of appeal ruling exercising general personal jurisdiction over Petitioner.

That ruling was justified for several reasons.

1. From the start, Petitioner's business has included the design, manufacture, and sale of child restraints. In recent years, Petitioner has delegated some—but not all—of that business to DJG (whose contacts with California are not disputed). If DJG did not perform the functions delegated to it, Petitioner would have to perform those functions.

2. In supervising DJG's conduct of its business, Petitioner is not a mere passive investor. Petitioner and DJG work "closely" on designing child restraints and other business activities. Petitioner conducts business activities in California for DJG. And Petitioner still carries on part of the business itself—selling child restraints in Canada.

3. Petitioner presents itself to the public as a single entity in SEC filings and annual reports, describing its subsidiaries' activities as its own.

Finally, the exercise of California jurisdiction over Petitioner is not unreasonable. Petitioner has undertaken its own activities in California—obtaining a license from the State of California and, in a California lease procured by Petitioner for DJG, *agreeing to be sued in California courts*.

These facts show that California's exercise of jurisdiction over Petitioner did not violate due process.

Moreover, the rationale below does not conflict with federal circuit court decisions. Federal courts, like the court below, exercise general jurisdiction over a parent corporation where (as here) a subsidiary corporation with forum contacts performs "representative services" that in the absence of the subsidiary the parent would have to perform itself. As shown below, this rationale is adopted in 13 federal decisions. Moreover, the federal decisions cited by Petitioner create no conflict with the decision below because they are either inapposite or apply the rule applied below—that jurisdiction may be asserted where (as here) a subsidiary with sufficient forum contacts assists the parent corporation's business by performing services the parent would otherwise have to perform itself.

Hence, Petitioner's claim—that the opinion below supposedly "eliminates the distinction between parent and subsidiary companies" (Pet. 8)—is simply not true. Indeed, the opinion below rejected jurisdiction "where the parent is merely a holding-company whose only business pursuit is the investment in the subsidiary." Pet. App. A 15a. Similarly, the trial court reasoned that "neither ownership nor control of a subsidiary corporation by a foreign parent corporation, without more, subjects the parent to the jurisdiction of the state where the subsidiary does business." Pet. App. B 28a (citation omitted). Hence, contrary to Petitioner's claim, the

California courts below recognize the distinction between parent and subsidiary companies and reject jurisdiction simply because the defendant is the parent of a subsidiary with forum contacts.

The court below agreed with a multitude of federal courts that allow jurisdiction under the "representative services doctrine" where (as here) a subsidiary with sufficient forum contacts "'provides services beyond "mere solicitation" and these services are sufficiently important to the foreign corporation that if it did not have a representative to perform them, the corporation's own officials would undertake to perform substantially similar services.'" Pet. App. A 14a (quoting *Chan v. Society Expeditions, Inc.*, 39 F.3d 1398, 1405 (9th Cir. 1994)). The trial court applied the same representative services doctrine to assert jurisdiction over Petitioner, also citing federal authority: *Gallagher v. Mazda Motors of America, Inc.*, 781 F. Supp. 1079, 1085 (E.D. Pa. 1992). Pet. App. B 29a.

In sum, California courts assert jurisdiction over a parent corporation *based on the same rationale as federal courts.* Hence, the conflict that Petitioner imagines between the opinion below and federal courts simply does not exist. Moreover, any conflict between California's intermediate appellate courts and federal appellate courts does not create a "compelling reason" for granting certiorari. Sup. Ct. R. 10(c). The petition should therefore be denied.

STATEMENT OF THE CASE

A. Petitioner's business is child restraints. Petitioner delegated design and manufacture to its subsidiary DJG.

Petitioner, an active operating company, was founded in Canada 1962 to design and manufacture child restraints in Canada. Pet. App. A 3a. Petitioner "is the sole owner of all patents and manufacturing licenses for its products." Brief in Opp. App. A 4a, ¶ 7(l). In 1987, Petitioner merged with Ridgewood Industries, a Canadian corporation. Through a Canadian public offering, Petitioner became publicly-owned. *Ibid.* In 1988 Petitioner expanded into the United States by buying Cosco, Inc. (corporate predecessor of DJG). *Ibid.* Cosco was a leading manufacturer of child restraints in the United States. *Ibid.*

Petitioner transferred design and manufacturing activities to "facilities in . . . California," as described by the trial court:

> In the late 1980s, Petitioner sought to expand its business internationally and thus purchased two juvenile product manufacturers located in the United States, Cosco, based in Indiana and Infantino, Inc., based in San Diego. Cosco was manufacturing a line of child care seats that was competing with Petitioner' products. After the acquisition, Petitioner ceased manufacturing juvenile products in Montreal and began importing these products from the facilities in Indiana and California.

Pet. App. B 26a.

Petitioner continued to make child products, including car seats, in Canada until 1995 or 1996, when it began importing Cosco's restraints to Canada. Pet. App. A 43. Thereafter, Petitioner had its juvenile products for both Canada and the United States designed and manufactured at Cosco in the United States. *Ibid.*

"[I]t was undisputed that DJG manufactured juvenile products that Petitioner had previously manufactured itself for sale to Petitioner's Canadian customers." Pet. App. A 18a.

Petitioner is now sole owner of Dorel U.S.A., Inc. (Dorel-USA), a Delaware corporation with its principal place of business in Indiana. Pet. App. A 3a. Dorel-USA is the sole owner of DJG. Pet. App. A 3a.

By 2003, 73 percent of sales by Petitioner and its subsidiaries were in the United States. *Ibid.*

"[T]here was evidence that DJG, the Indiana subsidiary, over which there is no dispute as to jurisdiction, performed functions that were compatible with and assisted the parent company (Petitioner) in the pursuit of the parent's own business as a Canadian operating company." Pet. App. A 19a.

For example, "the Canadian parent company [Petitioner] used its U.S. subsidiary [DJG] to design and manufacture the car seats, a task it otherwise would have done itself, to meet the demands of its Canadian customers." Pet. App. A 19a-20a.

In 2000, Petitioner acquired Safety 1st, a manufacturer of juvenile safety devices and merged Safety 1st and Cosco to form DJG, which continued the Cosco business of designing and manufacturing child safety seats for the United States and Canada. Pet. App. A 4a.

B. Petitioner is not a mere passive investor.

Petitioner is not a mere passive investor:

(1) Petitioner and DJG work "closely" on design of child restraints and other business activities.

(2) Petitioner conducts some business activities in California for DJG.

(3) Petitioner is an operating company, selling child restraints in Canada.

1. Petitioner and DJG work "closely" on design of child restraints and other business activities.

"Petitioner worked *closely* with DJG to insure that the car seats met the requirements of the Canadian government with regard to safety and labeling and the demands of the Canadian market place in terms of style." Pet. App. A 19a (emphasis added). "This work was done by DJG-Canada, *a division of Petitioner that was not a separate subsidiary company*." *Ibid.* (emphasis added).

"There was also evidence that DJG-Canada, got involved in customer service issues related to DJG products that were manufactured in the U.S. and distributed in Canada. *Ibid.*

Moreover, Petitioner provides DJG "financing, insurance, and procurement": For its "United States subsidiaries," Petitioner "provides basic structural services, such as arrangements for financing, insurance, and procurement," with the subsidiaries engaged in "designing, manufacturing, marketing, and distributing quality products." Pet. App. A 4a.

2. Petitioner conducts activities in California for DJG.

Petitioner conducts several activities in California that benefit DJG:

- Petitioner guaranteed the lease of a California warehouse *for DJG*. Pet. 5; Pet. App. A 13a.
- Petitioner's lease guarantee has a forum selection clause selecting Orange County, California. Pet. 5.
- Petitioner has a license from the California Bureau of Home Furnishings and Thermal Insulation. Pet. 5; Pet. App. A 13a-14a.

3. Petitioner sells child restraints.

A division of Petitioner called DJG-Canada buys juvenile products from DJG and sells them to Canadian customers. Pet. App. A 4a-5a. "DJG-Canada is a division of Petitioner and not a separate subsidiary company." Pet. App. A 5a. "Petitioner continued its traditional business of manufacturing and distributing juvenile products in Canada, including car seats, and . . . relied on DJG to design and manufacture those car seats." Pet. App. A 19a.

C. Petitioner regards its subsidiaries' activities as its own.

Ample evidence showed that DJG was carrying on the business of Petitioner.

1. Petitioner's 2003 annual report filed with the Securities and Exchange Commission describes the manufacture and sale of car seats as the business of Petitioner—*not* of its subsidiaries:

- Petitioner is "a global manufacturer of consumer products."
- Child restraints are part of the "product offering" of "Dorel."
- The manufacture and sale of child restraints in the United States are *Petitioner's* "*business*," conducted by its "juvenile products segment" (*not* subsidiary) (emphasis added).

Pet. App. A 5a.

2. Dorel Industries's annual reports describe DJG, the entity that manufactures the child safety seats in Indiana, as a "*division*." Pet. App. B 26a (emphasis added).

3. "DJG employees are Dorel Industries employees . . . carry[ing] out Dorel Industries' business, including the sale of juvenile products, such as car seats, in California." Pet. App. B 26a.

4. Dorel Industries employees participated in and *approved* DJG design and marketing activities:[1]

- "Two Dorel Industries' employees, Liz Klaus and David Hall, participated in design meetings for the Cosco Grand Explorer Shield Booster Seat." Pet. App. B 26a.

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1. This evidence presented by Real Parties in Interest was disputed by Petitioner. The trial court did not expressly resolve the dispute, but its ruling, denying Petitioner's motion to quash, impliedly accepted Real Parties' version presented above.

- "[A]pproval" by Klaus and Hall is "required for details such as product labels *as well as design features*." *Ibid.* (emphasis added).

- Jeffrey Segal, Dorel Industries' Executive Vice President of Sales and Marketing, "regularly participa[ted] in marketing and sales activities with DJG customers," attended "product development meetings in Indiana," "received copies of the [product development] meeting minutes each month," and "offered opinions" on DJG expenditures. Pet. App. B 27a.

D. The trial court ruling.

Based on this evidence, the trial court denied Petitioner's motion to quash, asserting jurisdiction over Petitioner under the following test: "[I]f a parent uses a subsidiary to do what it otherwise would have done itself, it has purposely availed itself of the privilege of doing business in the forum." Pet. App. B 29a. In so ruling, the trial court cited a federal decision, *Gallagher v. Mazda Motors of America, Inc.*, 781 F. Supp. 1079, 1085 (E.D. Pa. 1992).

E. The court of appeal ruling.

The opinion below denied Petitioner's challenge to the trial court's ruling under the following test:

> A foreign corporation is doing business in the forum state under this theory when its representative in the forum state "provides services beyond 'mere solicitation' and these services are sufficiently important to the foreign corporation that if it did not have a representative

> to perform them, the corporation's own officials would undertake to perform substantially similar services."

Pet. App. A 14a.

REASONS FOR DENYING THE PETITION

Petitioner asserts a conflict between the ruling below and federal Circuit court rulings. Petitioner's Question Presented asserts that California's "representative services doctrine"—attributing to foreign parent corporations the contacts of their subsidiaries when those subsidiaries assist in the parent's business—"conflicts with every federal Circuit that has considered the issue. . . ." Pet. *i*; 11 ("frank conflict"); 13 ("other courts conflict"); 15 ("stark conflict").

In truth, Petitioner's claim of a conflict between California's courts and federal courts is simply wrong, as shown below.

A. No conflict: California and federal courts apply the same rule, asserting jurisdiction where the subsidiary conducts the parent's business.

California and federal courts apply the same test when asked to assert jurisdiction over a parent corporation. Under that test, where (as here) the parent corporation is not a mere holding company but is an active operating company using a subsidiary to conduct "representative services" for the parent's corporation's business, jurisdiction may be asserted over the parent corporation (based on the subsidiary's forum contacts). Using the subsidiary's contacts to support jurisdiction over the foreign parent corporation in such

circumstances is justified for two reasons: (1) the subsidiary is performing services the parent corporation would otherwise have to perform in the forum itself; and (2) to reject jurisdiction over the parent corporation where the subsidiary is assisting the parent corporation's business would allow the parent corporation to "hide behind the corporate fiction" to evade accountability for injurious effects the parent caused in the forum. *K.J. Schwartzbaum, Inc. v. Evans, Inc.*, 44 F.R.D. 589, 590-591 (S.D.N.Y. 1968).

1. California courts.

Under the test articulated by the California intermediate appellate court below, a subsidiary's forum contacts support jurisdiction over a foreign parent corporation where (as here) the subsidiary "'provides services beyond 'mere solicitation' and these services are sufficiently important to the foreign corporation that if it did not have a representative to perform them, the corporation's own officials would undertake to perform substantially similar services.'" Pet. App. A 14a.

This statement of the "representative services doctrine" is consistent with California decision for the last half century.

For example, in 1961 the California Supreme Court ruled that if a subsidiary corporation conducts the parent's "economic activity," the parent corporation is subject to personal jurisdiction:

> Empire [the parent corporation] has engaged in economic activity within this state and obtained the benefits and protection of our laws . . . *through the instrumentality of a subsidiary corporation*. . . .

Empire Steel Corp. v. Superior Court, 56 Cal.2d 823, 834 (1961) (emphasis added).

Similarly, a California appellate court has said jurisdiction exists over a foreign parent "when the local subsidiary performs a functions that is compatible with, and assists the parent in the pursuit of, the parent's *own* business. . . ." *Hoffman-La Roche v. Superior Court*, 30 Cal.Rptr.3d 407, 419 (Cal.Ct.App. 2005)(emphasis in original); *accord*, *Paneno v. Centres for Academic Programmes Abroad Ltd.*, 13 Cal.Rptr.3d 759, 765 (Cal.Ct.App. 2004)(jurisdiction over a parent that "uses a subsidiary to do what it otherwise would have done itself . . .); *DVI v. Superior Court*, 128 Cal.Rptr.2d 683, 692 (Cal.Ct.App. 2002) (jurisdiction where "the local subsidiary performs a function that is compatible with, and assists the parent in the pursuit of, the parent's *own* business.") (emphasis in original); *Sonora Diamond Corp. v. Superior Court*, 99 Cal.Rptr.2d 824, 839 (Cal.Ct.App. 2000)(same).

These uniform statements of the "representative services doctrine" have resulted in uniform decisions—rejecting jurisdiction where the parent is a passive holding company. For example, where a Swiss parent drug company was "a true passive holding company that globally invests in pharmaceutical subsidiaries," the domestic entities were not "mere instrumentalities" of the Swiss corporation and the California court refused jurisdiction over the parent. *F. Hoffman-La Roche v. Superior Court*, *supra*, 30 Cal.Rptr.3d at 422; *accord*, *DVI v. Superior Court*, *supra* (no jurisdiction over foreign parent corporation where subsidiary did not perform representative services for the parent); *Sonora Diamond Corp. v. Superior Court*, *supra* (no jurisdiction over foreign parent corporation that was merely a passive investor).

The rule stated in these California decisions—barring jurisdiction over a mere passive investor parent corporation, but allowing jurisdiction where the subsidiary assists in the parent's own business—does not conflict with federal court rulings but is echoed in a multitude of federal decisions, as shown below.

2. Federal courts.

Federal courts articulate the same test stated by California courts for jurisdiction over a foreign parent corporation—rejecting jurisdiction where the parent is a passive holding company, but asserting jurisdiction where the parent conducts a business with a subsidiary performing services the parent would otherwise have to perform itself.

For example, in 1962 the Tenth Circuit articulated the "representative services doctrine" as follows: where the activities of a "wholly owned subsidiary [as] agent" of a foreign corporation "amount to *doing business of the parent*, the parent is subjected to the in personam jurisdiction of the state. . . ." *Curtis Publishing Co. v. Cassel*, 302 F.2d 132, 137 (10th Cir. 1962)(emphasis added).

This rule is followed by a multitude of federal courts.

The Ninth Circuit applied a jurisdictional test similar to the test in *Curtis* in *Chan v. Society Expeditions, Inc.*, 39 F.3d 1398, 1405 (9th Cir. 1994), *after remand*, 123 F.3d 1287 (1997):

> [A] foreign corporation is doing business in [the forum] "in the traditional sense" when its [forum] representative provides services beyond "mere

> solicitation" and these services are sufficiently important to the foreign corporation that if it did not have a representative to perform them, the corporation's own officials would undertake to perform substantially similar services.

Chan, *supra*, 39 F.3d at 1405 and fn. 9; *accord*, *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 423 (9th Cir. 1977).

The Second Circuit espouses the same rule—that a foreign corporation is subject to jurisdiction where its subsidiary "renders services on behalf of the foreign corporation that . . . are sufficiently important to the foreign entity that the [foreign] corporation itself would perform equivalent services if no agent were available." *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 95 (2d Cir. 2000); *accord*, *Gelfand v. Tanner Motor Tours, Ltd.*, 385 F.2d 116, 121 (2d Cir. 1967); *Freeman v. Gordon & Breach, Science Publishers, Inc.*, 398 F.Supp. 519, 521 (S.D.N.Y. 1975); *Sunrise Toyota, Ltd. v. Toyota Motor Co.*, 55 F.R.D. 519, 528-529 (S.D.N.Y. 1972); *Tokyo Boeki (U.S.A.), Inc. v. S.S. Navarino*, 324 F. Supp. 361, 366 (S.D.N.Y. 1971); *Spectacular Promotions, Inc. v. Radio Station WING*, 272 F.Supp. 734, 736 (E.D.N.Y. 1967).

The Eleventh Circuit also applies this rule to assert jurisdiction over international foreign parent corporations deemed to be doing business in the forum state through a subsidiary that promotes the parent's business. *Meier v. Sun Int'l Hotels, Inc.*, 288 F.3d 1264, 1275 (11th Cir. 2002) (Florida subsidiary promoting travel for Bahamian parent corporation), citing *Wiwa*, *supra*, 226 F.3d at 95.

Similarly, *Gallagher v. Mazda Motor of America, Inc.*, 781 F.Supp. 1[illegible] 1084-1085 (E.D.Pa. 1992) said jurisdiction exists over a foreign parent where the subsidiary engages in "activities that, but for the existence of the subsidiary, the parent would have to undertake itself." *Id.* at 1084. "Put another way, if a parent uses a subsidiary to do what it otherwise would have done itself, it has purposely availed itself of the privilege of doing business in the forum. Jurisdiction over the parent is therefore proper." *Id.* at 1085. *Gallagher* cited other district court decisions stating the same test for jurisdiction over a foreign parent corporation. *E.g.*, *Mirrow v. Club Med. Inc.*, 118 F.R.D. 418, 419-420 (E.D.Pa. 1986)(allowing jurisdiction over the parent corporation because the subsidiary "performs a function that [the parent corporation] would otherwise have to perform. . . ."); *Bulova Watch Co., Inc. v. K. Hattori & Co., Ltd.*, 508 F.Supp. 1322, 1342 (E.D.N.Y. 1981)(same).

In sum, federal courts uniformly assert jurisdiction over a foreign parent corporation on the ground that the foreign parent is present in the forum through a subsidiary's activities which, if the subsidiary did not exist, the parent corporation would have to perform itself.

3. Petitioner's cases create no conflict.

Petitioner cites four cases as supposedly conflicting with the decision below. But Petitioner's analysis of these cases is flawed. In truth, three of these cases are inapposite, and the fourth applies the rationale stated in the foregoing California and federal cases.

Petitioner first cites *Mylan Laboratories, Inc. v. Akzo, N.V.*, 2 F.3d 56 (4th Cir. 1993). But *Mylan* does not conflict

with the ruling below because it was decided under a different *state-law* test hinging on "control"—allowing jurisdiction over a parent corporation only if the parent exercised "considerable *control* over the activities of the subsidiary." *Id.* at 61 (emphasis added). By contrast, the parent corporation's control is not an essential element for jurisdiction over the parent corporation where (as here) the subsidiary performs essential services to advance the parent's business.

Petitioner next cites *Digi-Tel Holdings, Inc. v. Proteq Telecommunications (PTE), Ltd.*, 89 F.3d 519 (8th Cir. 1996). But *Digi-Tel*, which rejected jurisdiction over a foreign subsidiary (Proteq)[2] despite forum activities by the foreign parent corporation (Goldtron), does not conflict with the ruling below for several reasons.

First, *Digi-Tel*, adopted the same reasoning as the court below:

> In determining whether "minimum contacts" exist, contacts with the forum state that are made *on behalf of* the defendant by others may be considered. The Supreme Court has indicated that "when commercial activities are 'carried on in behalf of' an out-of-state party those activities may sometimes be ascribed to the party, at least where [it] is a 'primary participan[t]' in the

2. Digi-Tel agreed to buy cell phones from Major, which in turn agreed to buy those phones from Proteq. After Proteq failed to deliver the phones, Digi-Tel sued Proteq, asserting Digi-Tel's rights as third-party beneficiary of the Major/Proteq agreement and as assignee of Major's rights under that agreement.

> enterprise and has acted purposefully in directing those activities." *Burger King*, 471 U.S. at 480 n. 22, 105 S.Ct. at 2186 n. 22 (citations omitted).

Digi-Tel, *supra*, 89 F.3d at 523-524.

Second, *Digi-Tel* rejected jurisdiction because the forum contacts of both parent and subsidiary were insufficient (unlike the instant case). For example, in *Digi-Tel* the foreign parent corporation entered the forum to register its own trademark for a wide range of products (fax machines; cassette players; security equipment) including cell phones, the foreign subsidiary's business. But the parent's forum activities pertained to a cell phone different from the phone described in the subsidiary's forum contract. Though the parent did attempt to settle Digi-Tel's claim against Proteq, public policy bars settlement discussions from providing "contacts" for jurisdictional purposes, *Digi-Tel*, *supra*, at 524-525, and no evidence showed the parent's settlement discussions were "conducted primarily for the benefit of or at the direction of Proteq." *Id.* at 525.

Third, the type of jurisdiction addressed in *Digi-Tel* was "specific jurisdiction," requiring the alleged contacts to relate to the dispute leading to the suit (*id.* at 523, fn. 4), not "general jurisdiction," addressed in the opinion below.

Because of these fact-specific reasons for rejecting jurisdiction in *Digi-Tel*, that decision does not conflict with the ruling below.

Petitioner next cites *Religious Technology Center v. Liebreich*, 339 F.3d 369, 374 (5th Cir. 2003). But this decision

does not conflict with the decision below because *Religious Technology* did not involve jurisdiction over a foreign parent corporation based on a local subsidiary carrying on the parent's business. Rather, *Religious Technology* involved the general jurisdiction over an out-of-state *estate* where (1) the residence of the estate representative (Liebreich) was in the forum state and (2) the representative conducted "sporadic Estate-related activities" in the forum. *Religious Technology* rejected general jurisdiction for reasons unrelated to the instant case: (1) the representative's personal residence in the forum was not in a representative capacity, and (2) the representative had not engaged in "a systematic and continuous stream of activities tying the Estate to Texas." *Id.* at 374-375. *Religious Technology* did not cite or discuss any decisions involving jurisdiction over a foreign parent corporation. Hence, *Religious Technology*'s rejection of general jurisdiction over the representative of an out-of-state estate does not conflict with the ruling below.

Finally, Petitioner cites *Project Promotions, Inc. v. Cousteau*, 495 F.2d 483 (5th Cir. 1974), *partial overruling recognized in Burstein v. State Bar of California*, 693 F.2d 511, 518, fn. 12 (5th Cir. 1982). But *Project Promotions* did not discuss, let alone criticize, basing jurisdiction over a parent corporation on the subsidiary's "representative services" in the parent corporation's business. Rather this case applied an agency theory to reject jurisdiction over the parent for lack of "evidence that the parent exercised the type of control necessary to ascribe to it the activities of the subsidiary." *Id.* at 493. Because *Project Promotions* rejected jurisdiction for lack of evidence of control, this ruling under the different agency test does not conflict with the decision below, which also declined to impose jurisdiction under an agency theory.

As shown, the decisions that Petitioner claims to conflict with the ruling below raise no conflict at all—either in their rationales or in their results.

B. The decision below raises no "vitally important" issue.

In Part "C" the Petition claims that "resolution of the conflict is vitally important." Pet. 17-23. This claim has no merit.

First, as shown above, California decisions and federal decisions do *not* conflict over the standard for asserting jurisdiction over foreign parent corporations. Hence, the decision below raises no "vitally important" issue.

Moreover, *none* of the values cited by Petitioner—"Commercial Importance," "Importance of Due Process Values," "International Importance"—are threatened by the decision below.

Regarding "commercial importance," Petitioner's claim that the decision below leaves foreign parent corporations in "an unjustified state of uncertainty" (Pet. 18) is simply wrong. The test articulated by California and federal courts is quite specific, informing foreign parent corporations they are subject to jurisdiction if another corporation performs for the parent "representative services" the parent would otherwise have to perform itself.

Regarding due process, that value is protected by the "representative services doctrine." Under that doctrine, jurisdiction over passive foreign holding companies is barred, while jurisdiction over foreign parent companies that conduct business through "representative services" of subsidiaries is allowed.

Indeed, the "representative services doctrine" is supported by *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). International Shoe was a foreign corporation with no office or inventory in Washington, and International Shoe made no contracts in Washington. *Id.* at 313. International Shoe was represented in Washington by its salesmen, who displayed the company's products and solicited orders transmitted to St. Louis for acceptance or rejection. These salesmen supported personal jurisdiction over International Shoe by creating the company's "presence" in Washington based on "*activities carried on in its behalf* by those who are authorized to act for it." *Id.* at 316, 320 (evaluating "activities *carried on in behalf of appellant* in the State of Washington. . . .")(emphasis added). Hence, the ruling below complies with *International Shoe*'s due process requirements because Petitioner's "presence" in California rests on "activities carried on in its behalf," as *International Shoe* dictates.

Accepting Petitioner's contrary argument against jurisdiction would reduce the due process clause to a sham, allowing foreign parent corporations whose subsidiaries advance the parent's business to avoid jurisdiction simply by "hid[ing] behind the corporate fiction." *K.J. Schwartzbaum, Inc. v. Evans, Inc.*, 44 F.R.D. 589, 590-591 (S.D.N.Y. 1968).

Finally, regarding "international importance," the decision below threatens no unfairness to an alien corporate defendant. Petitioner thrust itself into the United States by becoming deeply involved in the business activities of DJG, its USA subsidiary. Petitioner has further thrust itself into California (1) by obtaining a license in its own name from the California Bureau of Home Furnishings and Thermal Insulation (Pet. 5; Pet. App. A 13a-

14a), (2) by guaranteeing the lease of a California warehouse *for DJG* (Pet. 5; Pet. App. A 13a), and (3) by agreeing under that lease's forum selection clause *to be sued in Orange County, California*. Pet. 5. As this Court has noted, "modern transportation and communications have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity." *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223 (1957).

Hence, for Petitioner to defend this suit in California will impose only a minimal burden that Petitioner *already accepted* by agreeing to be sued in Orange County. This minimal burden contrasts sharply with the burden that would have been borne by the Japanese defendant with *no* United States contacts in *Asahi Metal Industry Co., Ltd. v. Superior Court*, 480 U.S. 102 (1987).

CONCLUSION

The conflict asserted by Petitioner between the decision below and federal authorities simply does not exist. As shown, California and federal courts uniformly assert jurisdiction where a subsidiary with forum contacts performs "representative services" that promote the business of the foreign parent corporation. Because this "representative services" test for jurisdiction conforms to *International Shoe*, the decision below raises no "vitally important" issue.

The Petition should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX — DECLARATION OF ROBERT H. BOHN IN OPPOSITION TO DEFENDANT DOREL INDUSTRIES, INC.'S MOTION TO QUASH SERVICE OF SUMMONS DATED DECEMBER 14, 2004

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA CLARA

No. 1-04-CV014652

JONATHAN JACKSON, III, by and through his Guardian ad Litem, JOCELYN SULLIVAN; and JOCELYN SULLIVAN,

Plaintiffs,

v.

DOREL JUVENILE GROUP, INC., et al.,

Defendants.

DATE: December 14, 2004
TIME: 9:00 A.M.
DEPT: 7
JUDGE: Socrates Manoukian

TRIAL: Not set ye.

I, ROBERT H. BOHN, declare the following under penalty of perjury:

Appendix

I am an attorney licensed to practice law before all the courts of the State of California and am the attorney representing the plaintiffs herein. I know the following of my own personal knowledge and am competent to testify thereto if called upon as a witness.

1. Attached hereto and incorporated herein by reference as Exhibit "1" is a true and correct copy of the complaint in this action.

2. Attached hereto and incorporated by reference as Exhibit "2" is a true and correct copy of the amendment to the complaint substituting DOREL INDUSTRIES, INC. as Doe 1.

3. Attached hereto and incorporated by reference as Exhibit "3" is a true and correct copy of a letter from defense counsel to plaintiff's counsel stipulating that the depositions taken in the case of *Rapan v. Cosco* can be used as though taken in this case for the purpose of opposing defendant's motion to quash service of summons and complaint.

4. Attached hereto and incorporated by reference as Exhibit "4" is a true and correct copy of a lease for a warehouse in Ontario, California, provided by defendant DOREL JUVENILE GROUP, INC., in response to plaintiff's Request For Production of Documents (please note that the Lease Guarantee, Exhibit "J" to the Lease, at page 58 has been removed).

5. Attached hereto and incorporated by reference as Exhibit "5" is a true and correct copy of the Lease Guarantee

for the Ontario, California, property at the Shea Center obtained by subpoena.

6. Attached hereto and incorporated by reference as Exhibit "6" is a true and correct copy of the California Bureau of Home Furnishings and Thermal Insulation showing that DOREL INDUSTRIES OF CANADA is licensed by the State of California under License Number 123022.

7. Attached hereto and incorporated by reference as Exhibit "7" is a true and correct copy of DOREL INDUSTRIES, INC.'S 2003 Renewal Annual Information form of May 15, 2004, filed with the United States Securities Exchange Commission, which states that DOREL INDUSTRIES, INC.:

(a) Employs 5,000 people in fourteen countries (page 2);

(b) Its major ***"divisions"*** include DOREL JUVENILE GROUP, which incorporates the Cosco brand name (page 3);

(c) In 1988 DOREL purchased Cosco of Columbus, Indiana, which later became DOREL JUVENILE GROUP (page 3);

(d) In 1991 DOREL purchased Silgo International in San Diego (page 3);

(e) In 2000 DOREL purchased Safety 1st, Inc., then restructured its juvenile business in North America and

Europe, renaming the Columbus, Indiana, ***"Juvenile Operating Units"*** in Indiana the DOREL JUVENILE GROUP (page 4);

(f) The reporting currency of the corporation is in U.S. dollars (page 5);

(g) Its ***"Juvenile Products Segment"*** manufactures infant car seats under the brand name Cosco (page 6);

(h) The ***"Juvenile Products Segment's*** success hinges on successful new product development and Dorel's commitment to customer service." (page 6);

(i) In 2003, DOREL had two major customers (Walmart and Toys-R-Us) each representing more than 10% of sales." (page 7);

(j) DOREL maintains close relationships with its major retailers such as Walmart (page 7);

(k) In 2003 73% of DOREL's sales took place in the United States. (page 7);

(l) "Dorel is the sole owner of all patents and manufacturing licenses for its products." (page 8);

(m) "Research and development is an important part of Dorel's business success. Each year, each of Dorel's two ***operating segments*** introduces a large number of new products." (page 8);

(n) "Quality control is an essential part of Dorel's competitive position." (page 8);

(o) Car seat research and development is done at its plant in Columbus, Indiana. (page 9);

(p) Dorel's Class B shares are listed on the NASDAQ National Market under the symbol DIIB. (page 10);

(q) Martin Schwartz is the company's President and CEO (page 10);

(r) Jeff Segel is the company's Executive Vice President of Sales and Marketing; (page 11);

8. DOREL's major divisions in the United States include Ameriwood Industries and the DOREL JUVENILE GROUP (DJG USA), which incorporates the Cosco and Safety 1st brand names. (See Exhibit "7", p. 3).

9. Attached hereto and incorporated by reference as Exhibit "8" is a true and correct copy of a Notice of Ruling denying DOREL INDUSTRY, INC.'S motion to quash service of Summons and Complaint in an identical case in Riverside County, California, Case No. INC035190, *Isaiah Gabriel Rapan v. Cosco, Inc., Dorel Industries, Inc., et al.*

10. Attached hereto and incorporated herein by reference as Exhibit "9" is a true and correct copy of a facsimile message from Nick Costides to Martin Schwartz and Rick Lechner that on August 2, 1996, press releases issued by

Cosco, Inc., (Indiana) had to be approved by Martin Schwartz, CEO of DOREL INDUSTRIES, INC., Canada.

11. In 1997, while manufacture of all child booster seats was done in DOREL's Indiana plant, DOREL INDUSTRIES, INC., of Canada was recognized as the manufacturer of the product and responsible for replacement of safety labels on the products by the Canadian government. Attached hereto and incorporated by reference as Exhibit "10" is a true and correct of a memorandum to Mr. David Hall of DOREL INDUSTRIES, INC., addressing violations of labeling of these products manufactured in Indiana.

12. Attached hereto and incorporated by reference as Exhibit "11" is a true and correct copy of a January 9, 1997 facsimile from Terry Emerson of Cosco, Indiana, to David Hall, DOREL INDUSTRIES, INC., Canada, to review details of product labels on the Cosco Grand Explorer to get DOREL INDUSTRIES, INC.'s approval of label details.

13. Attached hereto and incorporated by reference as Exhibit "12" are true and correct excerpts of product development meeting minutes on the Grand Explorer from meetings on April 17, 1995, May 19, 1995, June 16, 1995, August 2, 1995, and May 11, 1999, showing complete copies of all product development meeting minutes were routinely sent to Martin Schwartz and other top management officers of DOREL INDUSTRIES, INC., of Canada.

14. Attached hereto and incorporated by reference as Exhibit "13" are excerpts of the deposition transcript of Jeffrey Allen Segel, Vice President of Sales and Marketing of DOREL INDUSTRIES, INC.

15. Attached hereto and incorporated by reference as Exhibit "14" are excerpts of the deposition transcript of Elizabeth Mary Christine Klaus, Quality Assurance Manager for DOREL INDUSTRIES, INC.

16. Attached hereto and incorporated by reference as Exhibit "15" are excerpts of the deposition transcript of David Hall, Vice President of Sales for DOREL INDUSTRIES, INC.

17. Attached hereto and incorporated by reference as Exhibit "16" are excerpts of the deposition transcript of David Cuelar, Director of Distribution for DOREL JUVENILE GROUP.

Executed this 2nd day of December, 2004, at San Jose, California, under the laws of the State of California.

s/ Robert H. Bohn
ROBERT H. BOHN, ESQ.